

Internal Revenue Service
memorandum

CC:TL

Br3:BMGately

date:

to: JUL 25 1988

District Director, Philadelphia
Attn: Chief, Examination Division

MA:PHI:E

from:

Director, Tax Litigation Division

CC:TL

subject:

Penalties under §§ 6652, 6672, 6721 and 6722 - Failure to File and Failure to Furnish Information Returns [PIN #85-3]

Attached please find PIN #85-3, which has been brought to the attention of this office by a request for technical advice. We were asked to confirm whether, under present law, the instructions given in PIN #85-3 are still correct. The effect of changes in the law brought about by the TRA of 1986 is that PIN #85-3 no longer represents a correct statement of the law.

ISSUE

Whether a failure to file information returns, with a concurrent failure to furnish information returns, gives rise to additions to tax sanctioning only the failure to file.

DISCUSSION

I.R.C. § 6041(a) provides that persons who make payments of \$600 per year or more shall make a return to the Secretary stating the amount of the payment and the name and address of the payee. This was also the rule in 1985, the year of PIN #85-3.

I.R.C. § 6041(d) provides that persons required to make returns under § 6041(a) shall also furnish statements to their payees, giving the payor's name and address and the aggregate amount of payments. In 1985, § 6041(d) also required the payor to furnish its identification number to the payee.

Former I.R.C. § 6652(a)(1) imposed a penalty for failure to file the information returns required by § 6041(a), but did not impose any sanction for failure to furnish a statement to the payee. Section 6652, as amended by the TRA of 1986, no longer imposes an addition for failure to make the return required under § 6041(a).

Former I.R.C. § 6678(a) imposed a penalty of \$50 per statement not furnished by providing, in pertinent part:

(a) In General.- In the case of each failure-

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. . . on the date prescribed therefor to a person with respect to whom a return has been made under section 6041 (a) . . .

§ 6678 was repealed by the TRA of 1986.

The combined effect of §§ 6652 and 6678 was to punish a failure to file an information return under any circumstances, but to leave unavenged a failure to furnish a statement to a payee where the payor also failed to file a return with the Secretary. This result appears to have been mandated by the former language of § 6678(a)(1), which assumed that a return was made to the Secretary before it imposed a penalty for failure to furnish a statement to the payee. Under the law as it read in 1985, the instructions given in PIN # 85-3, that only the failure to file penalty under § 6652 should be asserted in the failure to file and failure to furnish situation, were correct.

However, under present law, these instructions are no longer appropriate. I.R.C. § 6721 imposes a penalty of \$50 per return for a failure to file an information return. This penalty has a maximum amount of \$100,000, unless the failure is due to intentional disregard. If intentional disregard is present for a failure to file a § 6041(a) return, the § 6721 penalty is determined in accord with § 6721(b)(1)(A), and the \$100,000 does not apply.

In addition, I.R.C. § 6722(a) imposes a penalty of \$50 per statement for each failure to furnish a required statement to a payee. This penalty has a maximum of \$100,000. This section would penalize, therefore, a failure to furnish a statement required under § 6041(d). There does not appear to be any restriction in the present law against asserting both the §§ 6721 and 6722 additions where appropriate.

The §§ 6721 and 6722 penalties were added to the code by the TRA of 1986. The committee Reports on Pub. L. 99-514, later the TRA of 1986, state that by adding sections 6721 through 6724, Congress believed:

that simplifying these penalties, consolidating them, and making them more comprehensible will have a beneficial impact on tax compliance. Taxpayers will be able to understand more easily the consequences of noncompliance, and the administration of these penalties by the IRS should be facilitated by this simplification and consolidation.

In explaining the new provision, the committee reports addressed the issue resolved by PIN # 85-3:

The bill . . . clarifies the provisions relating to furnishing a written statement to the taxpayer of a number of the substantive information reporting provisions of the Code. Under present law, a number of these provisions arguably may be technically effective only if the person required to supply the copy to the taxpayer has actually provided the information return to the IRS. These provisions have been redrafted so that the requirement to supply a copy of the information return to the taxpayer is triggered when there is an obligation to file (instead of the actual filing of) an information return with the IRS.

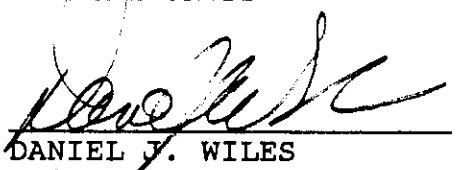
We believe this legislative history makes clear that the legislative intent is to penalize both a failure to file an information return and a failure to furnish the same. Therefore, we suggest that PIN # 85-3 should be reissued to reflect the change in the law.

We hope that this information is useful to you. Should you encounter any further difficulties, please do not hesitate to inquire further.

Sincerely,

MARLENE GROSS

By:


DANIEL J. WILES
Chief, Branch No. 3
Tax Litigation Division

Internal Revenue Service
memorandum

PIN #85-3

date: 28 JAN 1985

to: All Group Managers
thru: Chief, Examination Branch #1, (2) #3, and QRS

from: Penalty Coordinator
thru: Chief, Coordination Section (79N)

RECEIVED
EXAMINATION BRANCH #2
JAN 29 1985

DIST. DIR. OF INT. REVENUE
PHILADELPHIA, PA

subject: Penalties Under IRC 6652 and 6078 - Failure to File and Failure to Furnish Information Returns PIN #85-3

In any situation where a taxpayer has failed to file information returns under IRC 6041(a) and has also failed to issue a statement to the recipient under IRC 6041(d); examiners should only assert the penalty for failure to file information returns under IRC 6652. This position is based on advice from the Office of Chief Counsel and is effective upon receipt of this memorandum.

Also effective immediately, all penalty case files that propose a penalty under IRC 6652 and/or IRC 6678 will contain a Form 5334 - Non Master File Assessment Voucher as well as Form 3645 - Computation of Penalty for Failure to File Information Returns or Furnish Statements for each year a penalty is proposed. These two forms are required in order to have these cases properly processed by CSB.

If you have any questions, please contact me at FTS 597-9335.

Anthony J. Esposito
Anthony J. Esposito

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EXAM. DIVISION
FEB 4 1985

DIST. DIR. OF INTERNAL REVENUE
HARRISBURG, PA